IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 122 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE K. A. PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEMI ENGINEERING THR'PROPRIETOR -MUKESH PATEL -

Petitioner(s)

Versus

OIL & NATURAL GAS CORPORATION LTD. - Respondent(s)

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Appearance :
MR MIHIR JOSHI with MS MEGHA JANI for Petitioner(s) : 1,
MR AJAY R MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 10/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

1. This petition, under Article 226 of the Constitution, challenges the decision of the respondent authority i.e. ONGC as communicated through the letter dated 4th January, 2006 (Annexure-B) refusing to accept the petitioner's request for issuance of tender documents on the ground that the documents produced by the petitioner do not indicate eligibility of the petitioner for the contract in question.

2. The facts leading to this petition are as under:-

2.1 The respondent authority O.N.G.C. invited tenders for maintenance of developed area for lawn and garden in plant at HGPC, Hazira for two years. The estimated cost of the work is Rs.46.30 lacs. The tender notice is published in the news-paper dated 11th December, 2005. One of the

eligibility criteria is “Satisfactory completion of at least one work of similar nature and magnitude of completed value of Rs.16.70 lakhs in any Government Department/ PSU during last three years.”

2.2. When Mr.Mukesh Patel, Proprietor of Demi Engineering approached the respondent authority for collecting the tender documents, the petitioner was called upon to satisfy the authority about his eligibility as per the above tender condition. The petitioner stated that he was a partner of firm called M/s. Demi Enterprises which was formed as per the partnership deed dated 1st December, 1997 and which came to be dissolved by Dissolution Deed dated 6th October, 2004 (Annexure-A). The partnership firm comprised of two partners viz. Thakorebhai R.Patel and the petitioner himself. The petitioner also pointed out that the said firm had carried out/ was in the process of carrying out large number of similar work the particulars whereof were given in the annexure

which is to be found at Page-29 of the paper book. Out of the 10 contracts, at least six works were of the value of more than Rs.16.70 lacs each with Government Department/ PSU like Kribhco Plant and HAEPT.

2.3 The respondent authority, however, took the view that as per Clause-5 of the above dissolution deed, the credentials found in the name of dissolved firm were to be shared equally by the two partners at 50%, and , therefore, dividing the value of each contract indicated in the above annexure, the 50% share of the petitioner herein in none of those contracts worked out to Rs.16.70 lacs. The respondent authority, therefore, refused to give tender documents to the petitioner. Hence, this petition.

3. Mr.Mihir Joshi with Ms.Megha Jani learned counsel for the petitioner, have submitted that the respondent authority has misconstrued the contents of the dissolution deed by picking up one sentence

in Clause-5 of the deed out of context and has not appreciated that the dissolution deed did intend to convey that both the partners were to get the credit for the contracts performed by the partnership firm in the past. The learned counsel invited the Court's attention to Clause-2 and 6 of the Dissolution deed over and above the contents of Clause-5 thereof.

4. On the other hand, Mr.Mehta, learned counsel for the respondent, has submitted that Clause-5 of the Dissolution Deed itself was clear enough to show that each of the partners was to get only 50% credit for the relevant work contract executed by the partnership firm, and, therefore, no fault can be found with the decision of the respondent authority. It is further submitted that the petitioner has no right to challenge the legality and validity of the terms and conditions of the tender and the qualification prescribed by the authority inviting the tenders.

5. Having heard the learned counsel for the

respective parties, it is clear that the petitioner has not challenged the terms and conditions of the tender relating to the qualification prescribed by the respondent authority. There is no dispute about the fact that the relevant eligibility criterion reads as under:-

> " (1) Satisfactory completion of at least one work of similar nature and magnitude of completed value of Rs.16.70 lakhs in any Government Department/ PSU during last three years."

6. The object of stipulating such a condition is obvious. The estimated cost of the work for which tenders were invited is Rs.46.30 Lacs, and, therefore, the party submitting the tender must be having adequate experience of work of similar nature. A perusal of the dissolution deed at Annexure-A as well as anneuxres setting out the details of the contracts executed by M/s. Demi Enterprises clearly indicates that the firm had executed contracts for the works of the value of Rs.26 lacs, Rs.28 lacs and two contracts of Rs.20

lacs each in the last three years.

7. Clauses 2, 5 and 6 of the Dissolution Deed reads as under:

Clause-2:- The works already awarded by different Govt. agencies in the name of M/s. DEMI ENTERPRISES shall be continued till the completion of the works including receiving the final bill and settling the accounts of the same as per partnership deed dated 01.12.1997.

The running work orders in NTPC & UPL (NTPC undertaking) in name of Demi Enterprises Which are distributed as under:.....

.....The above works will be monitored and managed by above party as above mentioned to complete the work successfully.

It has been agreed among the party that the above parties can make application to amend the work order in the name of their own proprietary firm. The credential and work experience whatever be gained jointly including above work since beginning of the firm can be used by both the partners for

the entitlement to getting the tender documents for the earned experienced work.

Clause-5:- The credentials earned in the name of M/s. DEMI ENTERPRISES shall be shared equally by the parties as mentioned in the Annexure at 50% Partners shall have the credentials equally of works on Anexure of work order.

Clause-6:- The parties shall be free to use the credential as agreed in Annexure individually for the establishment of new firm and for getting works from the different Government Agencies equally.

8. A conjoint reading of the above clauses makes it very clear that each of the partners can rely upon the experience of the dissolved firm for the entitlement to get the tender documents for the earned work experience and for getting works from the different Government Agencies. It is apparent from the perusal of Clause-2 of the contract that question of keeping exclusively the contracts to each of the partners would arise on the date of the

dissolution deed only in respect of pending contracts but as far as experience from the contracts executed in the past is concerned, each partner is entitled to get the credentials for the purpose of getting work from different government agencies.

9. In view of the above clauses of the dissolution deed, we find considerable substance in the grievance being made on behalf of the petitioner that the decision of the respondent authority not considering the petitioner eligible for the contract in question is not in accordance with law and, therefore, the same deserves to be quashed and set aside and the declaration prayed for by the petitioner to direct the respondent authority to examine the petitioner's tender for the contract in question in view of the experience and turnover of M/s.Demi Enterprises, deserves to be granted.

10. The petition is accordingly allowed. The impugned decision dated 04.01.2006 at Annexure-B is quashed and set aside and the respondent authority

is directed to examine the petitioner's tender on the basis of experience and turnover of M/s. Demi Enterprises. Rule is accordingly made absolute.

Direct Service is permitted.

(M.S.SHAH, J.)

(K.A.PUJ, J.)

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